

PT 96-7
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE GRAND OLD CHURCH OF GOD IN CHRIST, APPLICANT)	94-16-1257
)	
v.)	Real Estate Exemption for 1994 Tax Year
)	
DEPARTMENT OF REVENUE STATE OF ILLINOIS)	P.I.N: 20-29-109-062
)	
)	Alan I. Marcus, Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

SYNOPSIS:

This matter comes on for hearing pursuant to The Grand Old Church of God in Christ's (hereinafter referred to as the "applicant" or "Grand Old Church"), protest of the Illinois Department of Revenue's, (herein referred to as the "Department"), denial of applicant's application for exemption from real estate taxes pursuant to **35 ILCS 200/15-10 et seq.**¹ At issue is whether the above-captioned parcel qualifies for exemption as a "property used exclusively for religious purposes" within the meaning of **35 ILCS 200/15-40**. Following submission of all evidence and a careful review of the record, it is recommended that this matter be resolved in favor of the applicant.

¹. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (**35 ILCS 200\1-1 et seq**).

FINDINGS OF FACT:

1. The parcel in question, (hereinafter, "parcel"), has been assigned Permanent Index Number 20-29-109-026 by the Cook County Board of (Tax) Appeals. Dept. Ex. No. 2.

2. The parcel consists of a one story building with a sign "The Grand Old Church of God in Christ" affixed to the roof and a parking lot in the rear. Dept. Gr. Ex. No. 1.

3. Applicant began using the parcel in December, 1991. Tr. p. 21.

4. Luther Edwards, (hereinafter "Edwards"), an ordained minister, owned the parcel during the 1994 assessment year. Dept. Gr. Ex. No. 1; Tr. p. 27.

A. Although Edwards paid the mortgage out of his own funds, neither he nor anyone else lived on the parcel during the 1994 assessment year. Tr. pp. 31, 44, 69.

B. Edwards obtained the funds to pay the mortgage by working as a professional truck driver. Tr. p. 70.

C. Edwards bought the property because applicant "had sufficient funds to contribute only \$11,000.00 toward the down payment." Dept. Gr. Ex. No. 1.

D. The remaining \$15,000.00 of the down payment came from personal savings of Edwards and his wife. *Id.*

E. In order to facilitate the parcel's purchase, the deed was placed in the names of Edwards and his wife, Doreatha. *Id.* This was done because the Edwards, as private individuals, were in more sound financial positions than the applicant. *Id.*

F. The Edwards always understood that the Church was the equitable owner of the parcel. *Id.*

G. At the time of purchase, the Edwards intended to record title in the applicant when it attained a more sound financial status. *Id.*

5. Edwards and his wife executed a quit claim deed granting applicant title to the parcel on August 4, 1995. Dept. Ex. No. 4; Tr. pp. 22-23. Applicant has been making monthly mortgage payments of \$591.70 since that time. Dept. Gr. Ex. No. 1.

6. Edwards lived at 1552 Minerva, Dolton, IL during the 1994 assessment year. Tr. p. 31.

7. The parcel was not subject to any type of leasehold during the 1994 assessment year. Tr. pp. 32, 45.

8. Edwards was applicant's pastor during the 1994 tax year. His duties included conducting services on Tuesdays, Wednesdays, Fridays and Sundays. Tr. pp. 19-20.

9. During the 1994 assessment year, applicant used the parcel for the following purposes:

A. Tuesday night services. Tr. p. 23.

B. Friday night evangelistic services. Tr. p. 24.

C. Sunday morning services. *Id.*

D. Sunday School. *Id.*

E. Thursday night choir rehearsal. *Id.*

F. A food drive. Tr. pp. 29-30.

G. A clothing drive. *Id.*

10. No other person or organization used the parcel during the 1994 assessment year. Tr. p. 72.

11. The Tuesday night service was a Bible study open to anyone who wished to come. Tr. pp. 25, 42. The Bible study involved lecture and discussion of various Scriptural topics, such as Christ the Good Shepherd or ways of winning people to Christ. Tr. pp. 42, 48-49.

12. The Friday night service was open to all who wished to come. It involved evangelistic preaching, Scriptural teaching and soul winning. Tr. pp. 25-26, 51.

A. Soul winning was directed toward "winning of souls to Christ." Tr. p.

26.

B. The Friday night service also involved congregants testifying as to what the Lord had done for them. Tr. p. 50.

13. The Sunday service was open to the public and involved Bible teaching, praying, singing and worshipping. Tr. pp. 26, 28.

A. The Sunday morning service followed the same format as the Friday night service except that testifying was omitted. Tr. p. 51.

14. Applicant took up collections at each of its services. The collections provided funding for literature related to the Bible studies and the Sunday school. Tr. p. 42.

15. The Sunday school was open to the public and met at 10:00 a.m. Tr. p. 28. Among the lessons taught were: Jesus Christ crucified, Bible stories, Jesus the Shepherd, and other Bible-related lessons. Tr. pp. 29, 41.

16. The food drive, which involved collecting donated food for the needy, was held in December, 1994. The donations were made available to anybody who needed them. Tr. pp. 30-31, 43. Those who worked on the food drive did so on a strictly volunteer basis. Tr. p. 44.

17. The clothing drive was held in October, 1994. Tr. p. 31. Those who worked on the clothing drive did so on a strictly volunteer basis. Tr. p. 44.

18. Applicant was incorporated as a not for profit corporation on December 5, 1984. Dept. Gr. Ex. No. 1.

19. During the 1994, assessment year, applicant was affiliated with the national Church of God in Christ. Tr. p. 55.

A. The national Church of God in Christ was incorporated as a not for profit organization. Tr. pp. 55-56. It provided literature for taxpayer's Bible study and Sunday school. Tr. pp. 48, 52.

B. Applicant collected money for the national Church of God in Christ during the 1994 assessment year. Tr. p. 56. The monies were used to support the operations of the national Church, such as missions, religious schools, ministries and missionaries in foreign fields. Tr. pp. 66-67.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from property taxes for the 1994 assessment year. Accordingly, under the reasoning given below, the determination by the Department that the above-captioned parcel does not qualify for such exemption under **35 ILCS 200/15-40** should be reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo v. Rose, 16 Ill. 2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill.App. 3d 497 (1st Dist. 1983).

In furtherance of its Constitutional mandate, the General Assembly enacted the Property Tax Code, **35 ILCS 200/1-3 et seq.**² The provisions of that statute which govern disposition of the present matter are contained in Section 200/15-40. In relevant part, those provisions state as follows:

All property *used* exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers,

². As noted in footnote 1, only the Property Tax Code, **35 ILCS 200/1-3 et seq.**, governs disposition of the instant case. However, it should be noted that the Revenue Act of 1939, **35 ILCS 205/1 et seq.**, contained statutes governing property tax exemptions for the 1992 and 1993 tax years. The exemption provisions for tax years prior to 1992 were contained in **Ill. Rev. Stat. 1991 par. 500 et seq.** These provisions, as well as their predecessors and successors, were repealed when the Property Tax Code took effect January 1, 1994. See, **35 ILCS 200/32-20**.

performing the duties of their vocation as ministers at such churches or religious institutions or for such denominations, and including the convents and monasteries where persons engaged in religious activities reside. (emphasis added).

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill.App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and, have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill.App. 3d 678 (4th Dist. 1994).

Prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment (which the emphasized language demonstrates is still in effect) eliminated that requirement. The test of exemption became use and not ownership. People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922). *See also*, American National Bank and Trust Company v. Department of Revenue, 242 Ill.App. 3d 716 (2nd Dist. 1993). However, both the plain language of Section 200/15-40 and Illinois case law prohibit exemption where property used exclusively for religious purposes is "leased or otherwise used with a view to profit ...[.]" Victory Christian Church v. Department of Revenue, 264 Ill. App. 3d 919 (1st Dist. 1988).

The Victory Christian court analyzed the prohibition on profitable use by looking to the intent of the owner in using the property. It held that because the owner, a private individual, intended to lease the property for purposes of personal profit, the property was not exempt from real estate taxes even though it was used for religious and school purposes. *Id.* at 922-921.

The instant case can be factually distinguished from Victory Christian because applicant did not lease the property from Pastor Edwards. However, that court's analysis of the owner's intended use is instructive in determining whether the parcel was ... "otherwise used with a view to profit."

Pastor Edwards and his wife owned the parcel because their financial position as private individuals was stronger than that of the applicant during the 1994 assessment year. In similar situations,

where practical business realities prevented charitable or educational institutions from obtaining ownership of an otherwise exempt parcel, Illinois courts have held that the legal owner holds title as a constructive trustee for the charitable or educational organization. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944).³

The policy rationales which underlie these decisions are different from the ones that support exemption of properties used exclusively for religious purposes. Nevertheless, these cases have recognized that constructive trusts provide a legal mechanism for enforcing the statutory prohibitions against profitable use that apply to properties used exclusively for charitable and educational purposes.⁴ Insofar as this mechanism created a fiduciary relationship that prohibited Pastor Edwards and his wife from using the parcel for personal profit, it fulfilled the same objectives as the constructive trusts set forth in Goodman and its progeny. Therefore, I conclude neither Pastor Edwards nor his wife used the property "with a view to profit" during the 1994 assessment year.

With respect to applicant's use, I note, as did the Victory Christian court, that "[i]f the owner of the property is exempt from taxes, then one may proceed to examine the use of the property to see if the tax exempt status continues or is destroyed." *Id.* at 922. Because Pastor Edwards and his wife are exempt as constructive trustees, and no other person or organization lived on or used the parcel during the 1994 assessment year, my analysis must focus on whether applicant-beneficiary used the property exclusively for religious purposes.

In People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911), the Illinois Supreme Court considered whether appellee's real estate qualified for religious and educational exemptions from property taxes under amendments to

³See also, Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978), (Because conventional financing was unavailable, appellee employed contract for warranty deed rather than conventional purchase money mortgage to purchase real estate used for charitable purposes); Southern Illinois University Foundation v. Booker, 98 Ill. App. 3d 1062 (5th Dist. 1981), (Appellants acquired title to property used for educational purposes from Southern Illinois University solely as a convenience to the University with regard to long-term financing); Cole Hospital v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983), (Due to troubled financial history and unavailability of State revenue bonds, Appellee employed conveyance and lease-back arrangement to obtain equitable title to property used for charitable purposes).

⁴See, 35 ILCS 200/15-35, 35 ILCS 200/15-65.

the Revenue Act that became effective July 1, 1909. While the court's analysis of the educational exemption has limited relevance to this proceeding, its definition of the term "religious purpose" provides the basic framework for analyzing taxpayer's claim under Section 200/15-40.

The court began its analysis by noting that "[w]hile religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations." McCullough, *supra* at 136.

Cases decided after McCullough have acknowledged that religious beliefs are not necessarily limited to those which profess an orthodox belief in God. *See, United States v. Seeger*, 380 U.S. 163 (1965). However, the following definition of "religious purpose" contained in McCullough, emphasizes a more traditional approach:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction. McCullough at 136-137.

Based on Findings of Fact 9 through 17, I conclude that the applicant satisfied the requirements for a religion set forth in McCullough. These same Findings of Fact, coupled with Findings of Fact 7 and 10, lead me to further conclude that the parcel was used for exclusively religious purposes during the 1994 assessment year. Although Illinois courts have interpreted the term "exclusive use" to mean the primary purpose for which property is used and not any secondary or incidental purpose," (Gas Research Institute v. Department of Revenue, 145 Ill.App. 3d 430 (1st Dist. 1987); Yale Club of Chicago v. Department of Revenue, 214 Ill.App. 3d 468 (1st Dist. 1991)), the aforementioned Findings of Fact clearly establish that the parcel's one and only use was religious in nature. Thus, the plain meaning of Section 200/15-40 requires that this applicant cannot be denied exemption unless it used the parcel with "a view to profit."

Applicant did not profit from using the premises because it used any revenues obtained from collections to support its Sunday school and national church. Insofar as applicant also used such revenues to purchase literature related to Bible studies, I conclude that these monies were used for non-profit religious purposes.

The preceding considerations, taken together, establish that applicant used the parcel for exclusively religious purposes within the meaning of Section 200/15-40. Inasmuch as such considerations further establish that neither the legal owners, Pastor Edwards and his wife, nor the applicant, as equitable beneficiaries, profited from such use during the 1994 assessment year, I recommend that the Department's denial of exemption be reversed. WHEREFORE, for the above-stated reasons, I recommend that this parcel should be removed from the tax rolls for the 1994 assessment year.

Date

Alan I. Marcus
Administrative Law Judge

